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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DIGITAL VERIFICATION SYSTEMS, LLC.

Case No: 4:21-cv-08529-YGR

Plaintiff,

MOTION TO STRIKE

vs.

SCANDALOUS MATERIALS FROM COUNTERCLAIMS

FOXIT SOFTWARE INCORPORATED,

Date: January 25, 2022

Time: 2:00 p.m.

Defendant.

Hon. Yvonne Gonzalez Rogers

Notice of Motion

PLEASE TAKE NOTICE that on January 25, 2022, at 2:00 p.m. before the Honorable Yvonne Gonzalez Rogers, Plaintiff Digital Verification Systems, LLC (“DVS”) respectfully will move pursuant to Civil L.R. 7-2 and Fed. R. Civ. P. 12(f) to strike Paragraph Nos. 2-4 and 9-12 of the counterclaims of Defendant Foxit Software Incorporated (“Foxit”). This Motion is based upon this Notice and the Memorandum herein, and the pleadings and other papers on file in this action and such further evidence or argument as may be presented at or before the hearing of this Motion.

1 DVS seeks an Order from this Court striking matters included in the
 2 Counterclaims which are immaterial to this litigation, including concerning the
 3 individual principal of Plaintiff, an LLC, and its local counsel in California.

4 **Memorandum**

5 **I. Introduction.**

6 Under Federal Rule of Civil Procedure 12(f), a court may strike from a
 7 pleading any insufficient defense and “any redundant, immaterial, impertinent, or
 8 scandalous matter.” Fed. R. Civ. P. 12(f). The essential purpose of Rule 12(f) is to
 9 “avoid the expenditure of time and money that must arise from litigating spurious
 10 issues by dispensing with those issues prior to trial.” *Fantasy, Inc. v. Fogerty*, 98 F.2d
 11 1524, 1527 (9th Cir. 1993). Accordingly, a court must construe the pleading in light
 12 most favorable to the pleading party, and it must deny the motion to strike if the pled
 13 allegations might be relevant to the action. *Daily v. Fed. Ins. Co.*, No. C 04-3791 PJH,
 14 2005 U.S. Dist. LEXIS 46001, 2005 WL 14734, at *5 (N.D. Cal. Jan. 3, 2005).

15 **II. Defendant’s Counterclaims Nos. 2-4, 9-12 Should be Stricken
 16 Because They are Immaterial to this Action.**

17 Although a court must deny the motion to strike if the pled allegations might be
 18 relevant to the action, here, the court should allow the motion to strike paragraph nos.
 19 2-4, and 9-12 because these allegations are immaterial and/or scandalous.

20 Defendant’s counterclaims include the following:

- 21 • [Paragraph No. 2]: Named-inventor Leigh Rothschild is the sole Director
 22 of Plaintiff Digital Verification Systems, LLC (“DVS”);
- 23 • [Paragraph No. 3]: Named-inventor Leigh Rothschild is the sole
 24 Manager of DVS;
- 25 • [Paragraph No. 4]: Named-inventor Leigh Rothschild is the sole owner
 26 of DVS.

1 Paragraphs 2-4 should be stricken because the role of named-inventor, Leigh
2 Rothschild, is immaterial to this patent infringement action or to Defendant's patent
3 invalidity counterclaims. Fed. R. Civ. P. 12(f). The Plaintiff, Digital Verification
4 Systems, LLC, is a Texas limited liability company, and Defendant has not
5 countersued or provided any basis to countersue inventor, Leigh Rothschild,
6 personally.

7 Defendant's counterclaims further include the following:

- 8 • [Paragraph No. 9]: Counsel for DVS, Mr. Lobbin, is a patent attorney
9 registered to practice before the USPTO;
- 10 • [Paragraph No. 10]: Mr. Lobbin's registration number is Reg. No.
11 41,159;
- 12 • [Paragraph No. 11]: Mr. Lobbin has been counsel of record in at least
13 200 patent litigations;
- 14 • [Paragraph No. 12]: Upon information and belief, counsel for DVS, Mr.
15 Lobbin, read the prosecution history for the asserted '860 Patent prior to
16 filing the complaint in this instant-action.

17 Paragraphs 9 and 10 should be stricken because the U.S. PTO registration
18 status and credentials of counsel for Plaintiff are immaterial to this patent
19 infringement action or to Defendant's invalidity counterclaims. Fed. R. Civ. P. 12(f).
20 Paragraph 12 should be stricken because Defendant provides no basis for this belief.
21 Finally, paragraph 11 should be stricken on the basis that this allegation is spurious
22 and serves no purpose relevant to this patent infringement action or to Defendant's
23 invalidity counterclaims. Fed. R. Civ. P. 12(f).

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1 **III. Conclusion.**

2 For the reasons set forth above, DVS respectfully requests that the Court
3 strike paragraph nos. 2-4 and 9-12 of Foxit's Counterclaims.
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5 Dated: December 15, 2021

Respectfully submitted,

6 */s/ Stephen M. Lobbin*

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13 *Attorney(s) for Plaintiff*

14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on December 15, 2021, I electronically transmitted the
16 foregoing document using the CM/ECF system for filing, which will transmit the
17 document electronically to all registered participants as identified on the Notice of
18 Electronic Filing, and paper copies have been served on those indicated as non-
registered participants.

19 */s/ Stephen M. Lobbin*

20 Stephen M. Lobbin